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**Via E-Mail**

Richard S. Davis  
Foley & Lardner LLP  
One Biscayne Tower  
2 South Biscayne Boulevard, Suite 1900  
Miami, FL 33131  
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Re: Subpoena to Caremark Rx, L.L.C. in *In re Actos Antitrust Litig.* (Coordinated Actions), No. 1:13-cv-09244-RA-SDA

Dear Mr. Davis:

I write on behalf of Takeda Pharmaceutical Company Limited, Takeda Americas Holdings, Inc., Takeda Pharmaceuticals U.S.A., Inc., and Takeda Development Center Americas, Inc. (collectively, “Takeda”) regarding the subpoena sent to Caremark Rx, L.L.C. (“Caremark”) in the above-captioned action.

In an email dated June 1, 2022, you requested and agreed to forward to Caremark correspondence “specifying a limited amount of documents” that Takeda seeks from Caremark, along with “the specific bases therefor.”<sup>1</sup>

Takeda has considered that request and is willing to circumscribe its requests to the six categories set forth below. These categories seek either data (such as can be pulled from Caremark’s databases) or specific documents that are likely to be maintained in readily identifiable repositories, and cannot be otherwise obtained from Plaintiffs. In addition, Takeda will narrow the time period applicable to these categories, from January 1, 2009 through December 31, 2015, to the date ranges identified below.

**I. Prescription-Level Data for ACTOS and Generic ACTOS (RFP No. 21)**

With regards to RFP No. 21, Takeda agrees to narrow the time period to January 1, 2011 through December 31, 2013.

The information sought is relevant to Plaintiffs’ claims and Takeda’s defenses because it relates to identification of the individuals and/or entities able to satisfy Plaintiffs’ definition for

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<sup>1</sup> The June 1, 2022 email was addressed to our predecessor, David Lukmire of Conrad O’Brien PC, who is no longer engaged on this matter.

class membership, as well as the incidence rate and size of injury incurred by any such putative class members.

## **II. Sample of Contracts Between Caremark and its Customers (RFP Nos. 4, 7, 18)**

With regards to RFP Nos. 4, 7, and 18, Takeda seeks a sampling of the contracts between Caremark and its customers (*e.g.*, employers, unions, health and welfare benefit funds), related to the administration or management of the prescription drug benefits offered by those customers to their members/employees. Takeda also agrees to narrow the time period for RFP Nos. 4, 7, and 18 to January 1, 2011 through December 31, 2013.

The requested contracts are relevant to Takeda's defense because they relate to identification of the individuals and/or entities able to satisfy Plaintiffs' definition for class membership, as well as the incidence rate and size of injury incurred by any such putative class members. Notably, one of Plaintiffs' criteria for class exclusion is based on whether a pharmacy benefit manager such as Caremark employed capitation agreements.

## **III. Data on Payments to Customers for ACTOS and Generic ACTOS (RFP No. 8)**

With regards to RFP No. 8, Takeda seeks data regarding all payments related to ACTOS or Generic ACTOS, made by Caremark to each of its active customers, under contracts related to the administration or management of the prescription drug benefits offered by those customers to their members/employees. Examples of such payments include but are not limited to: (1) rebates; (2) discounts; and/or (3) pricing guarantee payments. Takeda also agrees to narrow the time period for RFP No. 8 to January 1, 2011 through December 31, 2013.

The requested data is relevant to Takeda's defenses, because Takeda cannot calculate the *net* payments made by potential class members in connection with ACTOS and Generic ACTOS prescriptions without this information.

## **IV. Pharmaceutical and Therapeutics Committee Meeting Notes (RFP Nos. 2, 14)**

With regards to RFP Nos. 2 and 14, Takeda seeks formal meeting notes from meetings of Caremark's pharmaceutical and therapeutics committee at which the coverage and placement of ACTOS or Generic ACTOS on Caremark's formularies was discussed. This request includes any potential changes to Caremark's coverage and placement due to the market entry and/or changes in pricing of other drugs used to treat diabetes. Takeda also agrees to narrow the time period for RFP Nos. 2 and 14 to January 1, 2009 to December 31, 2013.

The requested documents are relevant to both Plaintiffs' claims and Takeda's defenses, because they are necessary to the determination of the relevant market.

**V. Sample of Contracts Between Caremark and Pharmacies (RFP Nos. 5, 10)**

With regards to RFP Nos. 5 and 10, Takeda agrees to limit its request to a sampling of the contracts between Caremark and pharmacies. The sample should be selected to reflect the range of different financial arrangements between Caremark and pharmacies, as well as different types of pharmacies, including but not limited to large chain pharmacies, small pharmacies, mail order pharmacies, and pharmacies affiliated with Caremark. Takeda also agrees to narrow the time period for RFP Nos. 5 and 10 to January 1, 2011 through December 31, 2013

The requested contracts are relevant to Plaintiffs' claims and Takeda's defenses because they are necessary to understand the incidence rate and size of injury incurred by potential class members.

**VI. Data on Payments from Pharmacies for ACTOS and Generic ACTOS (RFP No. 10)**

In further response to RFP No. 10, Takeda seeks data on all payments from pharmacies to Caremark, related to ACTOS and Generic ACTOS. Examples of such payments include, but are not limited to, direct and indirect remuneration fees charged by Caremark to pharmacies after the point of sale. As noted in RFP No. 10, to the extent any such payments were aggregate payments (*i.e.*, pertaining to both ACTOS and/or Generic ACTOS as well as other drugs), Takeda seeks information sufficient to determine the portion of such payment attributable to ACTOS and/or Generic ACTOS. Takeda also agrees to narrow the time period for RFP Nos. 5 and 10 to January 1, 2011 through December 31, 2013

The requested data is relevant to Takeda's defenses, because Takeda cannot calculate the *net* payments made by potential class members in connection with ACTOS and Generic ACTOS prescriptions without this information.

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We hope that these substantial modifications to both scope and time will enable Caremark to produce responsive documents and data. Please let us know if you have any questions or would like to discuss.

Sincerely,



Rachel Rodriguez  
of ELLIOTT KWOK LEVINE & JAROSLAW LLP